

1991—Pub. L. 102-40 renumbered section 3117 of this title as this section.

Subsec. (c)(2). Pub. L. 102-83 substituted “1315” for “415”.

Subsec. (c)(3). Pub. L. 102-83 substituted “1710(a)(1)(I)”, “1710(a)(2)”, “1710(b)”, and “1712(a)(2)(B)” for “610(a)(1)(I)”, “610(a)(2)”, “610(b)”, and “612(a)(2)(B)”, respectively.

NOTIFICATION PRIOR TO USE OF INCOME INFORMATION FROM OTHER FEDERAL AGENCIES

Section 8051(c) of Pub. L. 101-508 provided that:

“(1) The Secretary of Veterans Affairs shall notify individuals who (as of the date of the enactment of this Act [Nov. 5, 1990]) are applicants for or recipients of the benefits described in subsection (c) (other than paragraph (3)) of section 3117 [now 5317] of title 38, United States Code (as added by subsection (b)), that income information furnished to the Secretary by such applicants and recipients may be compared with information obtained by the Secretary from the Secretary of Health and Human Services or the Secretary of the Treasury under clause (viii) of section 6103(l)(7)(D) of the Internal Revenue Code of 1986 [26 U.S.C. 6103(l)(7)(D)] (as added by subsection (a)).

“(2) Notification under paragraph (1) shall be made not later than 90 days after the date of the enactment of this Act.

“(3) The Secretary of Veterans Affairs may not obtain information from the Secretary of Health and Human Services or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 (as added by subsection (a)) until notification under paragraph (1) is made.”

STUDY BY COMPTROLLER GENERAL ON EFFECTIVENESS OF AMENDMENTS BY PUB. L. 101-508

Section 8051(d) of Pub. L. 101-508 provided that: “The Comptroller General of the United States shall conduct a study of the effectiveness of the amendments made by this section [enacting this section] and shall submit a report on such study to the Committees on Veterans' Affairs and Ways and Means of the House of Representatives and the Committees on Veterans' Affairs and Finance of the Senate not later than January 1, 1992.”

§ 5318. Review of Department of Health and Human Services death information

(a) The Secretary shall periodically compare Department of Veterans Affairs information regarding persons to or for whom compensation or pension is being paid with information in the records of the Department of Health and Human Services relating to persons who have died for the purposes of—

(1) determining whether any such persons to whom compensation and pension is being paid are deceased;

(2) ensuring that such payments to or for any such persons who are deceased are terminated in a timely manner; and

(3) ensuring that collection of overpayments of such benefits resulting from payments after the death of such persons is initiated in a timely manner.

(b) The Department of Health and Human Services death information referred to in subsection (a) of this section is death information available to the Secretary from or through the Secretary of Health and Human Services, including death information available to the Secretary of Health and Human Services from a State, pursuant to a memorandum of understanding entered into by such Secretaries. Any such memorandum of understanding shall in-

clude safeguards to assure that information made available under it is not used for unauthorized purposes or improperly disclosed.

(Added Pub. L. 101-508, title VIII, §8053(b)(1), Nov. 5, 1990, 104 Stat. 1388-352, §3118; renumbered §5318, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3118 of this title as this section.

§ 5319. Limitations on access to financial records

(a) The Secretary may make a request referred to in section 1113(p) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(p)) only if the Secretary determines that the requested information—

(1) is necessary in order for the Secretary to administer the provisions of law referred to in that section; and

(2) cannot be secured by a reasonable search of records and information of the Department.

(b) The Secretary shall include a certification of the determinations referred to in subsection (a) in each request presented to a financial institution.

(c) Information disclosed pursuant to a request referred to in subsection (a) may be used solely for the purpose of the administration of benefits programs under laws administered by the Secretary if, except for the exemption in subsection (a), the disclosure of that information would otherwise be prohibited by any provision of the Right to Financial Privacy Act of 1978.

(Added Pub. L. 102-568, title VI, §603(b)(1), Oct. 29, 1992, 106 Stat. 4342.)

REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in subsec. (c), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, as amended, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS

Sec.

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| 5501. | Commitment actions. |
| 5502. | Payments to and supervision of fiduciaries. |
| 5503. | Hospitalized veterans and estates of incompetent institutionalized veterans. |
| 5504. | Administration of trust funds. |
| [5505.] | Repealed.] |

AMENDMENTS

1994—Pub. L. 103-446, title XII, §1201(g)(4)(B), Nov. 2, 1994, 108 Stat. 4687, struck out item 5505 “Limitation on compensation payments for certain incompetent veterans”.

1991—Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3201 to 3205 as 5501 to 5505, respectively.

1990—Pub. L. 101-508, title VIII, §8001(a)(2), Nov. 5, 1990, 104 Stat. 1388-342, added item 3205.

1984—Pub. L. 98-223, title II, §207(b)(2), Mar. 2, 1984, 98 Stat. 43, substituted “fiduciaries” for “guardians” in item 3202.

§ 5501. Commitment actions

The Secretary may incur necessary court costs and other expenses incident to proceedings for the commitment of mentally incompetent veterans to a Department hospital or domiciliary when necessary for treatment or domiciliary purposes.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1232, §3201; renumbered §5501, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3201 of this title as this section.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

§ 5502. Payments to and supervision of fiduciaries

(a)(1) Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other person for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary. Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.

(2) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the beneficiary's estate a reasonable commission for fiduciary services rendered, but the commission for any year may not exceed 4 percent of the monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary during such year. A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services on behalf of the beneficiary.

(b) Whenever it appears that any guardian, curator, conservator, or other person, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such guardian, curator, conservator, or other person or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary's authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction

over said cause, and make proper presentation of such matters. The Secretary, in the Secretary's discretion, may suspend payments to any such guardian, curator, conservator, or other person who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary's duly authorized attorney in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.

(c) Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Secretary.

(d) All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran's dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary's dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary's guardian, curator, or conservator, or, in the event of the beneficiary's death, to the beneficiary's personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary's personal representative if, under the law of the beneficiary's last legal residence, the beneficiary's estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named:

The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

(e) Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1232, §3202; Pub. L. 86-146, §1(a), Aug. 7, 1959, 73 Stat. 297; Pub. L. 92-328, title I, §105(a), June 30, 1972, 86 Stat. 395; Pub. L. 93-295, title III, §301, May 31, 1974, 88 Stat. 183; Pub. L. 97-295, §4(77), Oct. 12, 1982, 96 Stat. 1311; Pub. L. 98-223, title II, §207(a), (b)(1), Mar. 2, 1984, 98 Stat. 43; Pub. L. 99-576, title V, §505, title VII, §701(76), Oct. 28, 1986, 100 Stat. 3287, 3297; renumbered §5502 and amended Pub. L. 102-40, title III, §305(a), title IV, §402(b)(1), May 7, 1991, 105 Stat. 210, 238; Pub. L. 102-83, §4(a)(1), (2)(A)(ix), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

AMENDMENTS

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3202 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in four places.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (a)(2). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, §4(a)(2)(A)(ix), substituted "Secretary" for "Veterans' Administration" before "to obtain".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" and "Secretary's" for "Administrator's" wherever appearing.

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (d). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, §4(a)(2)(A)(ix), substituted "Secretary" for "Veterans' Administration" before "within".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Pub. L. 102-40, §305(a), substituted "a patient" for "an inmate" before "such veteran is".

Subsec. (e). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" after "to the".

Pub. L. 102-83, §4(a)(2)(A)(ix), substituted "Secretary" for "Veterans' Administration" after "or the".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

1986—Subsec. (a)(1). Pub. L. 99-576, §701(76)(A), substituted "the Administrator" for "he" before "may deem proper".

Subsec. (b). Pub. L. 99-576, §§505, 701(76)(B), substituted "the trust of such guardian, curator, conservator, or other person" for "his trust" in first sentence, substituted "the Administrator's" for "his duly" in first sentence, substituted "the Administrator's" for "his" in second and third sentences, substituted "the Administrator" for "himself" in third sentence, and inserted after second sentence "The Administrator may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary)."

Subsec. (d). Pub. L. 99-576, §701(76)(C), substituted "the veteran's" for "his" in second sentence, substituted "the beneficiary's" for "his" in third sentence, and in fourth sentence substituted "the beneficiary" for "him", "the beneficiary" for "he", and "the beneficiary's" for "his" in six places.

Subsec. (e). Pub. L. 99-576, §701(76)(D), struck out "his" before "last legal residence".

1984—Pub. L. 98-223, §207(b)(1), substituted "fiduciaries" for "guardians" in section catchline.

Subsec. (a). Pub. L. 98-223, §207(a), designated existing provisions as par. (1) and added par. (2).

1982—Subsec. (d). Pub. L. 97-295 substituted "August 7, 1959," for "the date of enactment of this sentence".

1974—Subsec. (a). Pub. L. 93-295, §301(a), among other changes, substituted provisions authorizing the Administrator, where it appears to him that the interests of the beneficiary would be served thereby, to pay benefits directly to the beneficiary or to a relative or some other person for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary, for provisions which authorized payments to the guardians, curators, conservators, or persons otherwise legally vested with the care or estate of the minor or of a person mentally incompetent or under other legal disability, and eliminated provisions which permitted payment of benefits direct to the person entitled thereto prior to receipt of notice that such person is under a legal disability adjudged by a court, and which permitted the Administrator to determine the person legally vested with the care of the claimant or his estate where no guardian, curator or conservator has been appointed.

Subsec. (c). Pub. L. 93-295, §301(b), substituted "fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Veterans' Administration" for "guardian, curator, conservator, or other person legally vested with the care of the claimant or his estate", and "such benefits" for "such estates".

Subsec. (e). Pub. L. 93-295, §301(c), substituted "hands of a fiduciary appointed by a State court or the Veterans' Administration derived from" for "hands of a guardian, curator, conservator, or person legally vested

with the care of the beneficiary or his estate, derived from", and "such fiduciary" for "such guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate".

Subsecs. (f), (g). Pub. L. 93-295, §301(d), repealed subsec. (f) which permitted the Administrator, in the case of any incompetent veteran having no guardian, to pay compensation, pension or retirement pay to the wife of such veteran for the use of the veteran and his dependents, and subsec. (g) which permitted payment of death benefits to a widow for herself and child or children, if any, notwithstanding that she may be a minor.

1972—Subsec. (d). Pub. L. 92-328 inserted provisions relating to filing for death benefit payments.

1959—Subsec. (d). Pub. L. 86-146 provided for payment, upon death of an incompetent veteran, of gratuitous benefits deposited in the personal funds of patients trust fund to surviving spouse, children or parents, for deposit of balance to credit of applicable current appropriation and for reimbursement of expenses of last sickness and burial.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-295 effective first day of second calendar month following May 31, 1974, see section 401 of Pub. L. 93-295, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-328 effective first day of second calendar month which begins after June 30, 1972, see section 301(a) of Pub. L. 92-328, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 3 of Pub. L. 86-146 provided that: "The amendments made by this Act [amending this section and section 3203 [now 5503] of this title] shall take effect as of the first day of the first calendar month which begins more than ninety days after the date of enactment of this Act [Aug. 7, 1959]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3501 of this title.

§ 5503. Hospitalized veterans and estates of incompetent institutionalized veterans

(a)(1)(A) Where any veteran having neither spouse nor child is being furnished domiciliary care by the Department, no pension in excess of \$90 per month shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care.

(B) Except as provided in subparagraph (D) of this paragraph, where any veteran having neither spouse nor child is being furnished nursing home care by the Department, no pension in excess of \$90 per month shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. Effective through September 30, 1997, any amount in excess of \$90 per month to which the veteran would be entitled but for the application of the preceding sentence shall be deposited in a revolving fund at the Department medical facility which furnished the veteran nursing care, and such amount shall be available for obligation without fiscal year limitation to help defray operating expenses of that facility.

(C) No pension in excess of \$90 per month shall be paid to or for a veteran having neither spouse nor child for any period after the month in which such veteran is readmitted for care de-

scribed in subparagraph (A) or (B) of this paragraph and furnished by the Department if such veteran is readmitted within six months of a period of care in connection with which pension was reduced pursuant to subparagraph (A) or (B) of this paragraph.

(D) In the case of a veteran being furnished nursing home care by the Department and with respect to whom subparagraph (B) of this paragraph requires a reduction in pension, such reduction shall not be made for a period of up to three additional calendar months after the last day of the third month referred to in such subparagraph if the Secretary determines that the primary purpose for the furnishing of such care during such additional period is for the Department to provide such veteran with a prescribed program of rehabilitation services, under chapter 17 of this title, designed to restore such veteran's ability to function within such veteran's family and community. If the Secretary determines that it is necessary, after such period, for the veteran to continue such program of rehabilitation services in order to achieve the purposes of such program and that the primary purpose of furnishing nursing home care to the veteran continues to be the provision of such program to the veteran, the reduction in pension required by subparagraph (B) of this paragraph shall not be made for the number of calendar months that the Secretary determines is necessary for the veteran to achieve the purposes of such program.

(2) The provisions of paragraph (1) shall also apply to a veteran being furnished such care who has a spouse but whose pension is payable under section 1521(b) of this title. In such a case, the Secretary may apportion and pay to the spouse, upon an affirmative showing of hardship, all or any part of the amounts in excess of the amount payable to the veteran while being furnished such care which would be payable to the veteran if pension were payable under section 1521(c) of this title.

(b)(1)(A) In any case in which a veteran having neither spouse nor child is being furnished hospital treatment or institutional or domiciliary care without charge or otherwise by the United States, or any political subdivision thereof, is rated by the Secretary in accordance with regulations as being incompetent, and the veteran's estate (excluding the value of the veteran's home unless there is no reasonable likelihood that the veteran will again reside in such home), from any source equals or exceeds \$1,500, further payments of pension, compensation, or emergency officers' retirement pay shall not be made until the estate is reduced to \$500.

(B) The amount which would be payable but for this paragraph shall be paid to the veteran in a lump sum; however, no payment of a lump sum herein authorized shall be made to the veteran until after the expiration of six months following a finding of competency and in the event of the veterans' death before payment of such lump sum no part thereof shall be payable.

(C) The Secretary may waive the discontinuance under this paragraph of payments to a veteran with respect to not more than 60 days of care of the veteran during any calendar year if the Secretary determines that the waiver is nec-

essary in order to avoid a hardship for the veteran. Any such waiver shall be made pursuant to regulations which the Secretary shall prescribe.

(2) Where any benefit is discontinued by reason of paragraph (1) of this subsection the Secretary may nevertheless apportion and pay to the dependent parents of the veteran on the basis of need all or any part of the benefit which would otherwise be payable to or for such incompetent veteran. Paragraph (1) of this subsection shall not prevent the payment, out of any remaining amounts discontinued under that paragraph, on account of any veteran of so much of the veteran's pension, compensation, or retirement pay as equals the amount charged to the veteran for the veteran's current care and maintenance in the institution in which treatment or care is furnished the veteran, but not more than the amount determined by the Secretary to be the proper charge as fixed by any applicable statute or valid administrative regulation.

(3) All or any part of the pension, compensation, or retirement pay payable on account of any incompetent veteran who is being furnished hospital treatment, institutional or domiciliary care may, in the discretion of the Secretary, be paid to the chief officer of the institution wherein the veteran is being furnished such treatment or care, to be properly accounted for by such chief officer and to be used for the benefit of the veteran.

(c) Any veteran subject to the provisions of subsection (b) shall be deemed to be single and without dependents in the absence of satisfactory evidence to the contrary. In no event shall increased compensation, pension, or retirement pay of such veteran be granted for any period more than one year before receipt of satisfactory evidence showing such veteran has a spouse, child, or dependent parent.

(d) Notwithstanding any other provision of this section or any other provision of law, no reduction shall be made in the pension of any veteran for any part of the period during which the veteran is furnished hospital treatment, or institutional or domiciliary care, for Hansen's disease, by the United States or any political subdivision thereof.

(e) Where any veteran in receipt of an aid and attendance allowance described in section 1114(r) of this title is hospitalized at Government expense, such allowance shall be discontinued from the first day of the second calendar month which begins after the date of the veteran's admission for such hospitalization for so long as such hospitalization continues. Any discontinuance required by administrative regulation, during hospitalization of a veteran by the Department, of increased pension based on need of regular aid and attendance or additional compensation based on need of regular aid and attendance as described in subsection (l) or (m) of section 1114 of this title, shall not be effective earlier than the first day of the second calendar month which begins after the date of the veterans' admission for hospitalization. In case a veteran affected by this subsection leaves a hospital against medical advice and is thereafter admitted to hospitalization within six months from the date of such departure, such allowance, in-

creased pension, or additional compensation, as the case may be, shall be discontinued from the date of such readmission for so long as such hospitalization continues.

(f)(1) For the purposes of this subsection—

(A) the term "Medicaid plan" means a State plan for medical assistance referred to in section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)); and

(B) the term "nursing facility" means a nursing facility described in section 1919 of such Act (42 U.S.C. 1396r), other than a facility that is a State home with respect to which the Secretary makes per diem payments for nursing home care pursuant to section 1741(a) of this title.

(2) If a veteran having neither spouse nor child is covered by a Medicaid plan for services furnished such veteran by a nursing facility, no pension in excess of \$90 per month shall be paid to or for the veteran for any period after the month of admission to such nursing facility.

(3) Notwithstanding any provision of title XIX of the Social Security Act, the amount of the payment paid a nursing facility pursuant to a Medicaid plan for services furnished a veteran may not be reduced by any amount of pension permitted to be paid such veteran under paragraph (2) of this subsection.

(4) A veteran is not liable to the United States for any payment of pension in excess of the amount permitted under this subsection that is paid to or for the veteran by reason of the inability or failure of the Secretary to reduce the veteran's pension under this subsection unless such inability or failure is the result of a willful concealment by the veteran of information necessary to make a reduction in pension under this subsection.

(5) The provisions of this subsection shall apply with respect to a surviving spouse having no child in the same manner as they apply to a veteran having neither spouse nor child.

(6) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

(7) This subsection expires on September 30, 1998.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1234, §3203; Pub. L. 86-146, §§1(b), 2, Aug. 7, 1959, 73 Stat. 298; Pub. L. 86-211, §6, Aug. 29, 1959, 73 Stat. 435; Pub. L. 87-544, §1, July 25, 1962, 76 Stat. 208; Pub. L. 87-556, §1, July 27, 1962, 76 Stat. 245; Pub. L. 87-645, §2(b), Sept. 7, 1962, 76 Stat. 441; Pub. L. 88-450, §5(a), Aug. 19, 1964, 78 Stat. 504; Pub. L. 89-362, §§1, 2, Mar. 7, 1966, 80 Stat. 30; Pub. L. 91-24, §10, June 11, 1969, 83 Stat. 34; Pub. L. 92-328, title I, §104, June 30, 1972, 86 Stat. 394; Pub. L. 93-177, §5, Dec. 6, 1973, 87 Stat. 696; Pub. L. 95-588, title III, §307, Nov. 4, 1978, 92 Stat. 2510; Pub. L. 96-385, title V, §503(b), Oct. 7, 1980, 94 Stat. 1534; Pub. L. 97-66, title VI, §602, Oct. 17, 1981, 95 Stat. 1034; Pub. L. 98-160, title VII, §703(4), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 98-543, title IV, §402(a), Oct. 24, 1984, 98 Stat. 2749; Pub. L. 99-576, title VII, §701(77), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 101-237, title I, §111(a), Dec. 18, 1989, 103 Stat. 2064; Pub. L. 101-508, title VIII, §8003(a), Nov. 5, 1990, 104 Stat. 1388-342; renun-

bered § 5503 and amended Pub. L. 102-40, title III, § 304(a), title IV, § 402(b)(1), May 7, 1991, 105 Stat. 209, 238; Pub. L. 102-83, §§ 4(a)(2)(A)(x), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403-406; Pub. L. 102-86, title I, § 101(a), Aug. 14, 1991, 105 Stat. 414; Pub. L. 102-568, title VI, § 601(a)-(c), Oct. 29, 1992, 106 Stat. 4341; Pub. L. 103-66, title XII, § 12005, Aug. 10, 1993, 107 Stat. 414.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (f)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1993—Subsec. (f)(7). Pub. L. 103-66 substituted “1998” for “1997”.

1992—Subsec. (a)(1)(B). Pub. L. 102-568, § 601(c), inserted at end “Effective through September 30, 1997, any amount in excess of \$90 per month to which the veteran would be entitled but for the application of the preceding sentence shall be deposited in a revolving fund at the Department medical facility which furnished the veteran nursing care, and such amount shall be available for obligation without fiscal year limitation to help defray operating expenses of that facility.”

Subsec. (f)(5), (6). Pub. L. 102-568, § 601(a), added par. (5) and redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (f)(7). Pub. L. 102-568, § 601(b), substituted “1997” for “1992”.

Pub. L. 102-568, § 601(a)(1), redesignated par. (6) as (7). 1991—Pub. L. 102-40, § 402(b)(1), renumbered section 3203 of this title as this section.

Subsec. (a)(1)(A), (B). Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Subsec. (a)(1)(C). Pub. L. 102-86 substituted “\$90” for “\$60”.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Subsec. (a)(1)(D). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration” in two places.

Subsec. (a)(2). Pub. L. 102-83, § 5(c)(1), substituted “1521(b)” and “1521(c)” for “521(b)” and “521(c)”, respectively.

Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (b)(1)(A). Pub. L. 102-83, § 4(a)(2)(A)(x), substituted “Secretary” for “Veterans’ Administration”.

Subsec. (b)(1)(C), (2), (3). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (e). Pub. L. 102-83, § 5(c)(1), substituted “1114(r)” and “1114” for “314(r)” and “314”, respectively.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Subsec. (f)(1)(B). Pub. L. 102-83, § 5(c)(1), substituted “1741(a)” for “641(a)”.

Pub. L. 102-40, § 304(a), inserted before period at end “, other than a facility that is a State home with respect to which the Secretary makes per diem payments for nursing home care pursuant to section 641(a) of this title”.

1990—Subsec. (f). Pub. L. 101-508 added subsec. (f).

1989—Subsec. (a)(1). Pub. L. 101-237, § 111(a), substituted “\$90” for “\$60” in subpars. (A) and (B), substituted “third” for “second” in subpar. (A), and struck out “hospital or” before “nursing home care” wherever appearing in subpars. (B) and (D).

1986—Subsec. (e). Pub. L. 99-576 substituted “the veteran’s” for “his” before “admission”.

1984—Subsec. (b)(1). Pub. L. 98-543 designated first and second sentences as subpars. (A) and (B), respectively, and in subpar. (A), as so designated, substituted “or” for the comma after “treatment”, struck out “by reason of mental illness” after “as being incompetent”, inserted “(excluding the value of the veteran’s home unless there is no reasonable likelihood that the veteran will again reside in such home),” after “the veteran’s estate”, and added subpar. (C).

1983—Subsec. (a)(2). Pub. L. 98-160, § 703(4)(A), (B), substituted “spouse” for “wife”, and “the veteran” for “him”.

Subsec. (b)(1). Pub. L. 98-160, § 703(4)(A), (C), substituted “spouse” for “wife” and “the veteran’s” for “his”.

Subsec. (b)(2). Pub. L. 98-160, § 703(4)(B), (C), substituted “the veteran” for “him”, and “the veteran’s” for “his”.

Subsec. (c). Pub. L. 98-160, § 703(4)(A), substituted “spouse” for “wife”.

Subsec. (d). Pub. L. 98-160, § 703(4)(D), substituted “the veteran” for “he”.

1981—Subsec. (a)(1)(B). Pub. L. 97-66, § 602(1), substituted “Except as provided in subparagraph (D) of this paragraph, where” for “Where”.

Subsec. (a)(1)(D). Pub. L. 97-66, § 602(2), added subpar. (D).

1980—Subsec. (a)(1)(C). Pub. L. 96-385 substituted “in connection with which pension was reduced pursuant to subparagraph (A) or (B) of this paragraph” for “of not less than two full calendar months”.

1978—Subsec. (a)(1). Pub. L. 95-588 revised and restructured par. (1) and, as so restructured, raised the maximum pension to be paid to a veteran being furnished institutional care who has neither wife nor child from \$50 per month to \$60 per month.

1973—Subsec. (a)(1). Pub. L. 93-177 substituted “\$50” for “\$30”.

1972—Subsec. (a). Pub. L. 92-328, § 104(a), (b), redesignated subsec. (d) as (a). Former subsec. (a), which related to payment of compensation or retirement pay to veterans being furnished hospital treatment, institutional or domiciliary care by the Veterans’ Administration, was struck out.

Subsec. (b)(1). Pub. L. 92-328, § 104(c), redesignated par. (2) as (1) and inserted provisions relating to the rating by the Veterans’ Administration of a veteran as incompetent by reason of mental illness and provisions relating to the payment of a lump sum to the veteran until after the expiration of six months following the finding of competency of the veteran. Former par. (1), which related to the payment of compensation or retirement pay pursuant to the provisions of subsec. (a) of this section to veterans rated by the Veterans’ Administration as incompetent, was struck out.

Subsec. (b)(2). Pub. L. 92-328, § 104(c), (d), redesignated par. (3) as (2) and substituted “(1)” for “(2)” wherever appearing. Former par. (2) redesignated (1).

Subsec. (b)(3), (4). Pub. L. 92-328, § 104(d), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (c). Pub. L. 92-328, § 104(e), struck out “(a) or” after “subsection”.

Subsec. (d). Pub. L. 92-328, § 104(b), (f), redesignated subsec. (e) as (d) and struck out “, compensation, or retirement pay” after “pension”. Former subsec. (d) redesignated (a).

Subsecs. (e), (f). Pub. L. 92-328, § 104(f), (g), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1969—Subsec. (d)(2). Pub. L. 91-24 substituted “the amount payable to the veteran while being furnished such care which would be payable to him if pension were payable under section 521(c) of this title” for “\$30 per month which would be payable to the veteran while being furnished such care if pension were payable to him under section 521(c) of this title”.

1966—Subsec. (a)(1). Pub. L. 89-362, § 1, limited the application of the rule requiring immediate reduction of withheld benefits following discharge against medical

advice or as a result of disciplinary action to situations where the readmission occurs within 6 months following prior termination of the hospitalization or institutional care.

Subsec. (f). Pub. L. 89-362, §2, limited the application of the rule requiring discontinuance of aid and attendance allowance upon readmission following departure from a hospital against medical advice to situations where the readmission occurs within 6 months following prior termination of the hospitalization.

1964—Subsec. (f). Pub. L. 88-450 directed that any discontinuance required by administrative regulation, during hospitalization of a veteran by the Veterans' Administration, of increased pension based on need of regular aid and attendance as described in subsection (l) or (m) of section 314 of this title, shall not be effective earlier than the first day of the second calendar month which begins after the date of the veteran's admission for hospitalization, and authorized discontinuance of the increased pension or additional compensation of a veteran upon readmission if he left a hospital against medical advice.

1962—Subsec. (a)(2)(A). Pub. L. 87-544 removed brothers, sisters, and nondependent parents from the permitted class of beneficiaries.

Subsec. (d)(1). Pub. L. 87-556, §1(1), limited par. (1) to veterans having neither wife nor child.

Subsec. (d)(2). Pub. L. 87-556, §1(2), substituted provisions making par. (1) applicable to a veteran having a wife but whose pension is payable under section 521(b) of this title, and in such case, authorized the Administrator to pay to the wife, upon an affirmative showing of hardship, all or any part of the amounts in excess of \$30 per month payable to the veteran under section 521(c) of this title, for provisions which permitted the Administrator, to pay to the wife or children of a veteran, the balance of the pension he would receive but for par. (1) of this section.

Subsec. (f). Pub. L. 87-645 added subsec. (f).

1959—Subsec. (a)(1). Pub. L. 86-211, §6(1), struck out references to pensions.

Subsec. (a)(2)(B). Pub. L. 86-146, §1(b), inserted "under the last two sentences of section 3202(d) of this title or" before "under this paragraph" in two places.

Subsec. (b). Pub. L. 86-146, §2, inserted "to the veteran" and "and in the event of the veterans' death before payment of such lump sum no part thereof shall be payable" in par. (1); substituted "in which such an incompetent veteran having neither wife nor child is being furnished hospital treatment, institutional or domiciliary care without charge or otherwise by the United States, or any political subdivision thereof, and his estate from any source equals or exceeds \$1,500, further payments of pension, compensation, or emergency officers' retirement pay" and "paragraph" for "where the estate of such incompetent veteran derived from any source equals or exceeds \$1,500, further payments of such benefits (except retired pay, but including emergency officers' retirement pay" and "subsection" and inserted "before payment of such lump sum" in par. (2); added par. (3); and redesignated former par. (3) as (4).

Subsec. (b)(1). Pub. L. 86-211, §6(1), struck out reference to pension of a veteran.

Subsecs. (d), (e). Pub. L. 86-211, §6(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 601(d) of Pub. L. 102-568 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1992, and shall apply with respect to months after September 1992. The amendment made by subsection (c) [amending this section] shall take effect on November 1, 1992, and shall apply with respect to months after October 1992."

EFFECTIVE DATE OF 1991 AMENDMENTS

Section 101(b) of Pub. L. 102-86 provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if contained in section 111 of

the Veterans' Benefits Amendments of 1989 (Public Law 101-237; 103 Stat. 2064)."

Section 304(b) of Pub. L. 102-40 provided that: "The amendment made by subsection (a) [amending this section] shall apply as if included in the amendment made by section 8003(a) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508; 104 Stat. 1388-874)."

EFFECTIVE DATE OF 1990 AMENDMENT

Section 8003(b) of Pub. L. 101-508 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on November 1, 1990, or the date of the enactment of this Act [Nov. 5, 1990], whichever is later."

EFFECTIVE DATE OF 1989 AMENDMENT

Section 111(b) of Pub. L. 101-237 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on February 1, 1990."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-66 effective Oct. 17, 1981, and applicable with respect to veterans admitted to a Veterans' Administration hospital or nursing home on or after such date, see section 701(b)(5) of Pub. L. 97-66, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-385 effective Oct. 1, 1980, see section 601(b) of Pub. L. 96-385, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-588 effective Jan. 1, 1979, see section 401 of Pub. L. 95-588, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-177 effective Jan. 1, 1974, see section 8 of Pub. L. 93-177, set out as a note under section 1521 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-328 effective first day of second calendar month which begins after June 30, 1972, see section 301(a) of Pub. L. 92-328, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 5(b) of Pub. L. 88-450 provided that: "The amendment made by this section [amending this section] shall apply only with respect to compensation or pension based upon need of regular aid and attendance in the case of veterans admitted for hospitalization on or after the first day of the second calendar month which begins after the date of enactment of this Act [Aug. 19, 1964]."

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87-645 effective first day of first calendar month which begins after Sept. 7, 1962, see section 4 of Pub. L. 87-645, set out as a note under section 1112 of this title.

Section 2(b) of Pub. L. 87-556 provided that: "The amendments made by this Act [amending this section] shall take effect on the first day of the first calendar month which begins more than thirty days after the date of enactment of this Act [July 27, 1962]."

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86-211 effective July 1, 1960, see section 10 of Pub. L. 86-211, set out as a note under section 1521 of this title.

Amendment by Pub. L. 86-146 effective first day of first calendar month which begins more than ninety days after Aug. 7, 1959, see section 3 of Pub. L. 86-146, set out as a note under section 5502 of this title.

IMPROVEMENT IN PENSION PROGRAM ADMINISTRATION;
REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 99-166, title I, §108(d), Dec. 3, 1985, 99 Stat. 947, provided that (1) in order to improve timeliness of adjustments made pursuant to subsec. (a) of this section, in amount of pension being paid to a veteran being furnished nursing home care by Veterans' Administration, the Chief Medical Director [now Under Secretary for Health] of the Veterans' Administration was to develop improved procedures for notifying the Chief Benefits Director [now Under Secretary for Benefits] of the Veterans' Administration when a veteran is admitted to a nursing home, and (2) the Administrator was to submit to Committees on Veterans' Affairs of the Senate and House of Representatives a report, within 90 days, on development and implementation of such procedures.

REGULATIONS; WAIVER FOR HARDSHIP REASONS

Section 402(b) of Pub. L. 98-543 provided that: "The Administrator [now Secretary] shall prescribe regulations under subparagraph (C) of section 3203(b)(1) [now 5503(b)(1)] of title 38, United States Code (as added by subsection (a)), not later than 60 days after the date of the enactment of this Act [Oct. 24, 1984]."

PAYMENT OF LUMP SUM COMPENSATION OR RETIREMENT
PAY TO VETERANS WITHHELD PURSUANT TO PROVI-
SIONS IN EFFECT ON THE DAY BEFORE THE EFFECTIVE
DATE OF PUB. L. 92-328

Section 106 of Pub. L. 92-328 provided that: "All compensation or retirement pay which is being withheld pursuant to the provisions of subsections (a) and (b)(1) of section 3203 [now 5503], title 38, United States Code, in effect on the day before the effective date of this Act, shall be paid to the veteran, if competent, in a lump sum. If the veteran is incompetent, the withheld amounts shall be paid in a lump sum, or successive lump sums, subject to the \$1,500 and \$500 limitations of subsection (b)(1) of such section 3203 [now 5503] as amended by this Act. If a competent veteran dies before payment is made the withheld amounts shall be paid according to the order of precedence, and subject to the time limitation, of subsection (a)(2) of such section 3203 [now 5503] in effect the day before the effective date of this Act. In the event of the death of an incompetent veteran before payment of all withheld amounts, no part of the remainder shall be payable."

[For effective date of Pub. L. 92-328, see Effective Date of 1972 Amendment notes set out under sections 1114, 1134, and 3713 of this title.]

APPLICABILITY OF 1966 AMENDMENTS TO ANY PENSION
ELIGIBILITY WHICH IS SUBJECT TO VETERANS' PEN-
SION ACT OF 1959

Section 3 of Pub. L. 89-362 provided that: "The amendments made by this Act [amending this section] shall also apply to cases in which pension eligibility is subject to the provisions of section 9(b) of the Veterans' Pension Act of 1959 [set out as a note under section 1521 of this title]."

APPLICABILITY OF 1962 AMENDMENTS TO PERSONS NOT
ELECTING PENSION UNDER VETERANS' ACT OF 1959

Section 2(a) of Pub. L. 87-556 provided that: "The amendments made by this Act [amending this section] shall not apply to cases in which pension is payable pursuant to sections 9(b) and (c) of the Veterans' Pension Act of 1959 [set out as notes under section 1521 of this title]."

Section 2 of Pub. L. 87-544 provided that: "The amendment made by this Act [amending this section] shall also apply to cases in which pension eligibility is subject to the provisions of section 9(b) of the Veterans' Pension Act of 1959 [set out as notes under section 1521 of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1114, 5112 of this title.

§ 5504. Administration of trust funds

All cash balances in the personal funds of patients and the funds due incompetent beneficiaries trust funds administered by the Secretary, and all moneys received which are properly for deposit into these funds, may be deposited, respectively, into deposit fund accounts with the United States Treasury and such balances and deposits shall thereupon be available for disbursement for properly authorized purposes. When any balances have been on deposit with the Treasurer of the United States for more than one year and represent moneys belonging to individuals whose whereabouts are unknown, they shall be transferred and disposed of as directed in section 1322(a) of title 31.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1235, §3204; Pub. L. 97-258, §3(k)(5), Sept. 13, 1982, 96 Stat. 1065; renumbered §5504, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), Aug. 6, 1991, 105 Stat. 403.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3204 of this title as this section.

Pub. L. 102-83 substituted "administered by the Secretary" for "administered by the Veterans' Administration".

1982—Pub. L. 97-258 substituted "section 1322(a) of title 31" for "the last proviso of subsection (a) of section 725s of title 31".

[§ 5505. Repealed. Pub. L. 103-446, title XII,
§ 1201(g)(4)(A), Nov. 2, 1994, 108 Stat. 4687]

Section, added Pub. L. 101-508, title VIII, §8001(a)(1), Nov. 5, 1990, 104 Stat. 1388-341, §3205; renumbered §5505, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238, related to limitation on compensation payments for certain incompetent veterans.

CHAPTER 57—RECORDS AND
INVESTIGATIONS

SUBCHAPTER I—RECORDS

Sec.	
5701.	Confidential nature of claims.
5702.	Furnishing of records.
5703.	Certification of records of District of Columbia.
5704.	Transcript of trial records.
5705.	Confidentiality of medical quality-assurance records.

SUBCHAPTER II—INVESTIGATIONS

5711.	Authority to issue subpoenas.
5712.	Validity of affidavits.
5713.	Disobedience to subpoena.

AMENDMENTS

1991—Pub. L. 102-54, §14(d)(5)(B), (6)(C), June 13, 1991, 105 Stat. 286, amended table of sections at beginning of chapter as in effect immediately before the enactment of Pub. L. 102-40 by substituting "subpoenas" for "subpenas" in item 3311 and "subpoena" for "subpena" in item 3313.

Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3301 to 3313 as 5701 to 5713, respectively.

1980—Pub. L. 96-385, title V, §505(b), Oct. 7, 1980, 94 Stat. 1537, added item 3305.

SUBCHAPTER I—RECORDS

§ 5701. Confidential nature of claims

(a) All files, records, reports, and other papers and documents pertaining to any claim under